



# Maine Creditor Update

## Office of Consumer Credit Regulation



Issue #43

Regulatory News for Maine's Creditors

Jan./Feb. 2005

## Legislators Introduce Consumer Finance-Related Bills

The 122nd Legislature has convened, and judging by the bill titles published in late December, many legislators will be proposing bills affecting consumer credit and finance issues.

Bills addressing dormancy fees on **gift cards and gift certificates** form one of the largest categories, based on the following submissions:

- An Act to Place a Seven-year Limit on the Redemption of Gift Certificates (LR # 255, sponsored by Rep. Marley)
- An Act To Make Inactivity Fees on Gift Cards Illegal (LR #397, sponsored by Rep. Valentino)
- An Act To Amend the Maine Unclaimed Property Act as it Applies to Gift Cards (LR #791, sponsored by Sen. Turner)
- An Act To Clarify Transactions Associated with Gift Certificates (LR #1017, sponsored by Rep. Gagnon)
- An Act To Protect Consumer Gift Obligations (LR #1082, sponsored by Rep. Plummer)
- An Act To Protect Consumers Who Use Gift Cards (LR #1509, sponsored by Rep. Duplessie)
- An Act To Protect Consumers' Use of Gift Cards (LR #1677, sponsored by Rep. Thompson)

Several other bills would amend Maine's **credit card** laws:

- An Act To Prohibit A Credit Card Processing Company from Charging a Termination Fee (LR #82; LD 6, sponsored by Rep. Moody)
- An Act To Prohibit Payment Card Skimming (LR #793, sponsored by Sen. Snowe-Mello)
- An Act To Prohibit Credit Card Companies from Charging Late Fees on Certain Accounts (LR #795, sponsored by Rep. Schatz)
- An Act To Cap Interest Rates on Credit Cards at the Prime Rate (LR #805, sponsored by Rep. Tuttle)
- An Act To Require Credit Cards to Contain Photo and Signature of Card Holder (LR #1194, sponsored by Sen. Andrews)
- An Act To Provide Consumers an Itemized Receipt for Gasoline Purchased with a Credit or Debit Card (LR #1493, sponsored by Rep. Duplessie)

Other measures would amend Maine's **payroll processor** law by reducing or eliminating the new requirement that any com-

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## Agency Proposes Legislation Affecting Real Estate Transactions

Three bills will be introduced this session at the request of the Office of Consumer Credit Regulation. They are:

1. *An Act to Restrict Undocumented Mortgage Agreements.* The state has received complaints from real estate sellers and agents, concerning the growing practice of parties being asked to enter into substantial "side deals" involving funds paid by the seller to the buyer that are not reflected in the closing documents. Already prohibited in FHA-insured loans but not addressed in state law, this type of arrangement results in an overstatement of the property's true price on the HUD-1 form, as well as an overstatement of the buyer's equity in the property. The bill would provide clear guidance to all parties to the transaction by prohibiting side deals that result in substantial overstatements of the sales price.

2. *An Act to Amend the Consumer Credit Code.* This bill would require mortgage companies and servicers to ensure timely pay-

*continued on page 2*

## Merchants Must Now Delete Card Numbers From Receipts

As of January 1, 2005, merchants in Maine are required to ensure that an electronic receipt given to a consumer for a credit, debit or ATM card transaction does not list more than the last 5 digits of the consumer's account number or the card's expiration date.

The law regulating such receipts was originally enacted in 2003 and was scheduled to take effect last year, on January 1, 2004. However, businesses successfully lobbied the Legislature for a one-year delay by demonstrating that insufficient numbers of technicians were available to modify cash register software and printers to comply with the law.

The law's intent is to reduce identity theft, since a thief in possession of a complete account number and a card's expiration date may be successful in ordering goods in a consumer's name using the telephone or the Internet. The law does not apply to the few remaining older, manual card systems, but does affect the vast majority of transactions that result in electronically-printed receipts.

Merchants that violate the law face penalties of up to \$250 for a first offense, and up to \$1,000 for subsequent violations. The Maine statute (10 MRSA §1149) does not assign specific enforcement responsibilities, and therefore would be administered by District Attorneys or by the Attorney General's Office.

Mailing Address	Inside:	Office Location
Office of Consumer Credit Regulation 35 State House Station Augusta, Maine 04333-0035 Tel (207) 624-8527 Fax (207) 582-7699	Disciplinary Action.....2 Quotes.....3 Mainers Receive Fraudulent E-Mails..4 Soldiers' Relief Act.....5 Notice of Agency Rulemaking.....5	Gardiner Annex 122 Northern Ave., Gardiner, ME 04345  World Wide Website www.MaineCreditReg.org

## Legislators Introduce, continued from page 1

panies that handle employer funds, post a surety bond:

- An Act To Lower the Surety Bond Requirement for Payroll Processors (LR #398, sponsored by Rep. O'Brien)
- An Act To Support Payroll Processors (LR #450, sponsored by Rep. Lansley)
- An Act To Relieve Small Payroll Companies from Excessive Regulation (LR #840, sponsored by Rep. Lindell)
- An Act To Amend the Surety Bonding Laws for Payroll (LR #1751, sponsored by Rep. Pelletier-Simpson)

Several bills would impact **real estate sales transactions** and **mortgage lenders**:

- An Act To Clarify the Applicability of the Maine Consumer Credit Code to Low-income Housing Organizations (LR #155, sponsored by Sen. Mayo, III)
- An Act To License Nonbank Loan Officers (LR #679, sponsored by Rep. Glynn)
- An Act To Require the Disclosure of Private Mortgage Insurance (LR #1446, sponsored by Rep. Richardson)
- An Act To Protect Consumers and Enhance Real Estate Practices (LR #1497, sponsored by Sen. Brennan)
- An Act To Protect Workers in the Mortgage and Mortgage Refinance Services Fields (LR #1787, sponsored by Rep. Lerman)
- An Act To Ensure Disclosure in Real Estate Transactions (LR #1889, sponsored by Rep. Bryant)

Three bills would strengthen Maine's **identity theft** laws:

- Resolve, To Reduce the Opportunities for Fraud and Identity Theft (LR #148, sponsored by Rep. Barstow)
- An Act To Prevent Identity Theft (LR #1671, sponsored by Rep. Farrington)
- An Act To Establish the Maine Identity Theft and Deterrence Act (LR #1553, sponsored by Sen. Brennan)

One bill would enact or amend the **payday lending** laws in Maine:

- An Act to Establish Consumer Protections and Regulations for Deferred Deposit Loans, (LR #1491, sponsored by Rep. Duplessie)

One measure would provide enhanced remedies for merchants who receive **bounced checks**:

- An Act To Provide Relief to Retailers Who Have Been Issued a Bad Check (LR #8, sponsored by Rep. Kaelin)

Another measure would prevent consumers from easily **accessing funds for gambling purposes**:

- An Act To Ban Automated Teller Machines from within 500 Feet of Slot Machine Facilities (LR #52, sponsored by Sen. Strimling)

And a final bill is designed to improve Mainer's **"financial literacy"**:

- An Act To Encourage Personal and Family Financial Management Education (LR #1227, sponsored by Rep. Brown)

As these bills are printed, they will be available at the Legislature's website, <http://janus.state.me.us/legis/session/>.

## Record of Disciplinary Action

August 1, 2004-December 30, 2004

DATE	NAME	TYPE OF ACTION
09/30/04	Phillips and Cohen Assoc. Westampton, NJ	Cease & Desist – unlicensed collection agency (company subsequently licensed 3 offices in December, 2004)
10/26/04	Money Tree Mortgage, Inc. Woodstock, GA	Consent Agreement – lender license revocation appeal dropped; restitution paid

## Notice of Agency Error

In the September, 2004 issue of *Maine Creditor Update*, we reported that Northeastern Financial LLC d/b/a Blackwood Financial had been the subject of a cease and desist directive in July of 2003. That information was erroneous. Neither Northeastern Financial LLC nor its principals have been the subject of any disciplinary action, and the company is in good standing with our agency as a credit services organization (loan broker). The error was partially the result of a Canadian advance fee loan scam that fraudulently used the "Blackwood" name and address in advertising around the country in 2003. We regret the error.

## Agency Proposes Legislation, continued from page 1

ment of consumers' taxes and insurance premiums from escrow accounts, and would also require lenders to provide prompt loan payoff figures upon request. In addition, the bill would permit the state to assert jurisdiction over companies that fraudulently claim to be located in Maine or that falsely claim to hold a Maine license.

3. *An Act to Amend the Loan Broker Laws.* This bill would strengthen consumer protections for Maine residents who hire loan brokers, by 1) requiring that a broker's state license number appear in all print advertising; 2) permitting the state to impose continuing education requirements on loan brokers; and 3) increasing the current consumer protection bond from \$10,000 to \$25,000.

### STATE OF MAINE OFFICE OF CONSUMER CREDIT REGULATION

Director . . . . .	William N. Lund
Examiner-in-Charge . . . . .	Linda Cunningham
Principal Examiner . . . . .	Del Pelton
Principal Examiner . . . . .	Richard Howard
Principal Examiner/Research/Outreach . . . . .	David Stetson
Research/Outreach . . . . .	David Leach
Senior Examiner (half-time) . . . . .	Mary Young
Senior Examiner . . . . .	Douglas Stark
Senior Examiner . . . . .	Douglas Jennings
Senior Examiner (half-time) . . . . .	Kristine Fournier
Administrative Secretary . . . . .	Doris Whitaker
Clerk/Typist IV . . . . .	Lorna Plaisted
Clerk/Typist III . . . . .	Emilie Sinclair
Clerk/Typist II . . . . .	April Breton

## Noteworthy Quotes

“No interest! No payment!”  
– Credit advertisement from Augusta-area furniture store.  
The newspaper omitted the phrase “... for 90 days.”

“I’m temporarily leaving my job as licensing coordinator, because I’m going out on maternity leave. Having this baby is going to be a lot easier than getting a debt collector license from the State of Maine.”

– Executive of a large mid-western collection agency. The licensing process was delayed when our agency pointed out that the company’s balance sheet reflected a negative net worth of -\$1.8 million.

“This consumer alleges that we charged him \$15,000 in closing costs on his debt consolidation loan. This is a blatant lie. He was only charged \$13,833.78.”

– Lender’s response to our office regarding a Maine consumer’s complaint.

“I’m sorry we can’t comply with your request to voluntarily return our client’s Maine mortgage company license. The FBI is not releasing any documents right now.”

– A California spokesperson for an Ohio lender. Using our emergency authority, we subsequently terminated the lender’s license.

“Please get my money back for a secondhand item I ordered from a private seller but never received. It was a Body by Jake Bun and Thigh Rocker. Please do not use my name.”

– Anonymous Saco, Maine consumer

“Is there computer software that will block my Social Security number from printing if my boyfriend tries to use it to open a bank account?”

– Brunswick, Maine woman, who may need to find a new boyfriend.

From the “You can’t talk that way to Maine consumers” department:

“You can collect cans and bottles off the street and redeem them to pay toward this debt.”

– Alleged statement by a Massachusetts debt collector to a Portland, Maine consumer.

“Go live in your car, and send us your rent money.”

– Alleged statement of out-of-state debt collector to Bangor, Maine woman.

Collector: “I’m calling about your debt.”

Maine consumer: “Who is this?”

Collector: “Aaron.”

Maine consumer: “Aaron who?”

Collector: “Aaron Pay-your-bill.”

– Alleged conversation between a Merrill, Maine consumer and a collector from a large, national collection agency.

... And from the “We know what you meant to say” department:

“When I refused to give the collector my son’s phone number, he became abstinent and didn’t want to talk to me any more.”

– Wilton, Maine consumer explaining a collector’s obstinacy

“The debt collector’s voice was loud, deep and omnibus.”

– Eastport, Maine consumer, who likely meant to write “ominous”

“When I couldn’t deal with the collector, I asked to talk to her supervisor, but her supervisor was even more wrathful.”

– Windham, Maine consumer, who likely meant to write, “full of wrath”(?).

## Update on Payroll Processing License Program

As of January 15, 2005 a total of 45 payroll processors have submitted license applications to the Office of Consumer Credit Regulation under the enhanced regulatory program enacted in 2004.

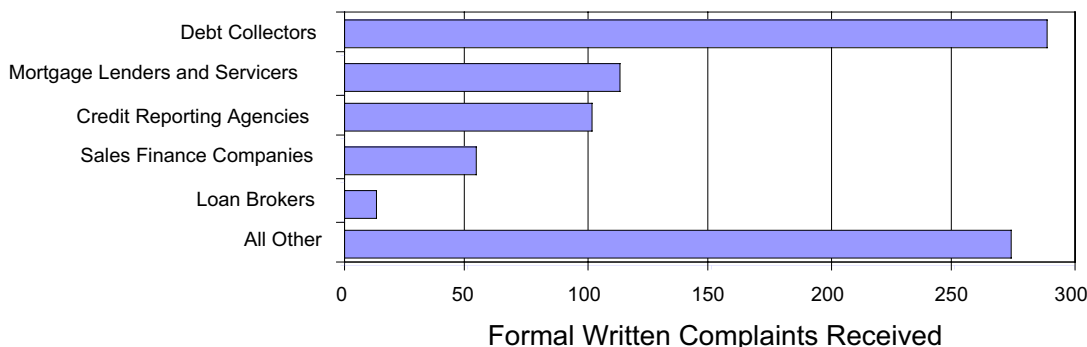
More applications are expected, based on the “conditional license” option made available in December to processors who

could not otherwise qualify for large surety bonds. The conditional license will be supported by a bond in the amount of \$50,000.

For more information on this program, including copies of the statute and the various memos and forms that were provided to bonding companies and payroll processors from June, 2004 through December 2004, visit our agency’s website, [www.Maine-CreditReg.org](http://www.Maine-CreditReg.org) and click on the “Payroll Processor License Application and Information” link.

## CONSUMER COMPLAINT REPORT

January 1, 2004 - December 31, 2004



Total Formal Written Complaints: 948

Total Telephone Complaints/Requests for Assistance: 3,401

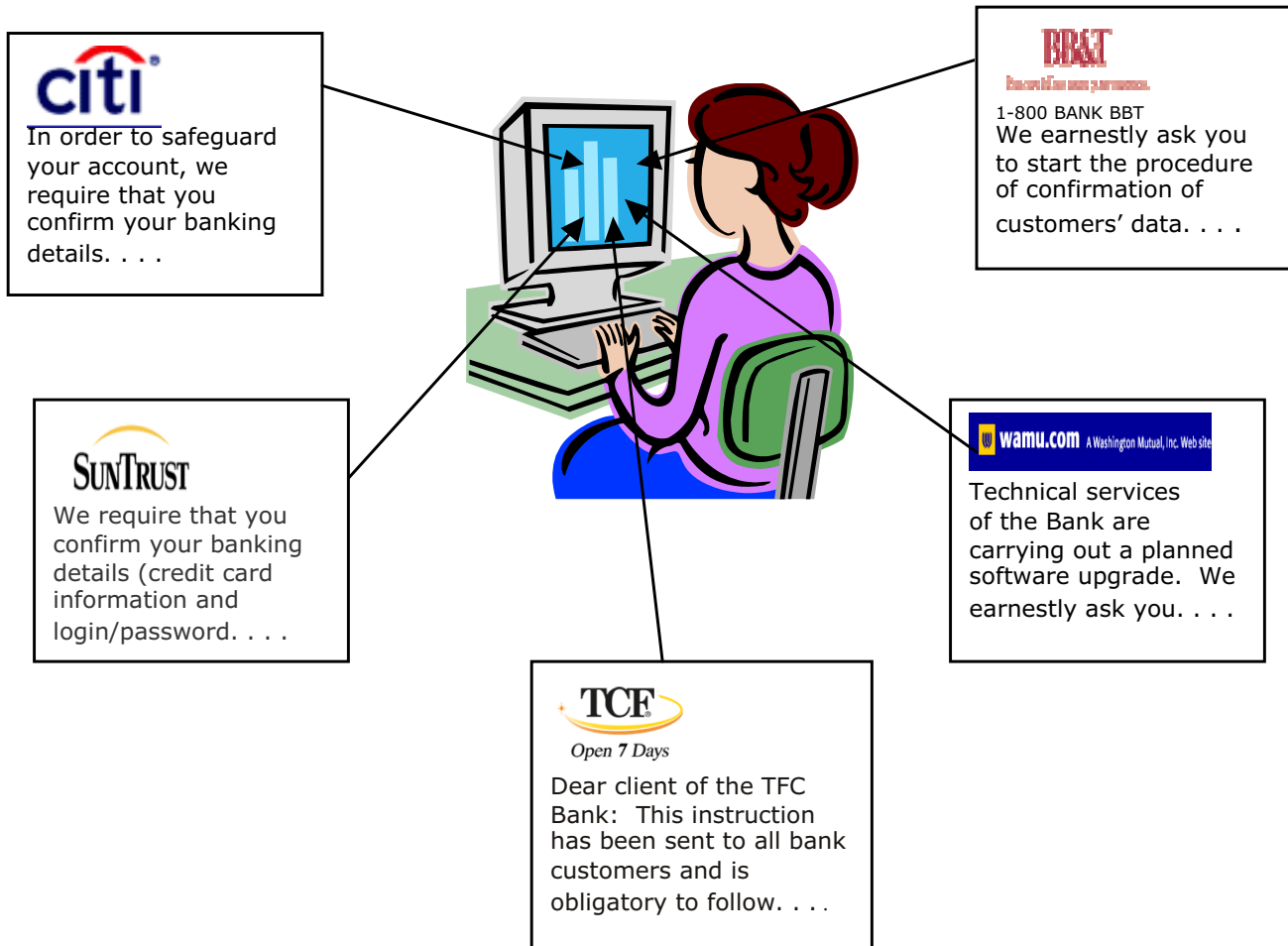
Restitution to Consumers Through Complaints: \$42,038

# Mainers Receive Fraudulent “Phishing” E-Mails

Many Maine consumers have contacted the Office of Consumer Credit Regulation to say that they have received very realistic-looking e-mails purporting to be from banks, PayPal, America Online or other large companies.

Fortunately, most of the consumers did not fall victim to the messages, which invariably asked consumers to “confirm” such information as account numbers, passwords and personal identification numbers (PINs).

Examples of these pages are found below:



The FTC and the US Department of Justice have brought actions against perpetrators of these types of crimes. Jurisdiction for such enforcement actions is found in the Gramm-Leach Bliley Act, which prohibits anyone from obtaining a consumer's private financial information by fraudulent means.

If consumers are fooled into providing the information, identity thieves may be able to withdraw funds from existing accounts or open new ones in the consumers' names. Consumers who suspect that they have been scammed should 1) notify creditors of the fraud; 2) close existing affected accounts; 3) monitor credit or deposit accounts closely for unauthorized charges or debits, and dispute any such activity if it is found; and 4) monitor their credit reports and place a “fraud alert” on their reports preventing new accounts from being opened without personal verification.

Perpetrators of this type of loan apparently have no conscience, and are willing to take advantage of consumers even when those consumers are trying to assist thousands of victims of a natural disaster. As proof of this theory, MasterCard recently reported 133 separate phishing efforts attempting to siphon off consumers' donations intended for tsunami victims in Southeast Asia.



## Soldiers' Relief Act Impacts National, Local Creditors

With about 1,000 troops -- representing more than half of Maine's National Guard forces -- currently on active duty, creditors should be mindful of the protections bestowed by the federal law called the Servicemembers Civil Relief Act (50 U.S.C. App. § 501), formerly known as the Soldiers' and Sailors' Civil Relief Act.

The law applies to anyone on active service and affects obligations (except student loans) incurred before the servicemember was activated. Protections include:

- Reduction of credit interest rates to 6% (excess is forgiven, not just deferred)
- Monthly payments must be reduced to reflect the lowered interest rate
- Lower rates and other protections apply to spouses, and to other, non-servicepersons who are co-obligated on the debt
- Dependents of servicepersons cannot be civilly evicted from low-rent housing
- Servicemembers can break residential or business leases entered into before their time of duty, and (under recent changes to the law) can terminate vehicle leases
- Repossession of collateral is restricted or prohibited
- Strict (non-judicial) foreclosure against a servicemember is prohibited
- Storage facility operators may not sell items (including vehicles) while the serviceperson is on duty, and for 3 months afterwards
- State and federal income tax payments are deferred until 6 months after duty ends, if military service affects the ability of the serviceperson to pay those taxes

Most national creditors are aware of their responsibilities under this law, but servicemembers or their families should notify all creditors in writing of the active status, and should request a written acknowledgement. Local creditors should check with their legal advisors. Collection agencies, collection attorneys and creditors who take their own cases to Small Claims Court should be especially careful to make inquiry of the debtor to determine possible military status, in order to avoid violating the law.

## Gift Cards Subject to Consumer Protections

Gift cards and gift certificates constitute a significant (and growing) percentage of holiday purchases, according to retail merchants in Maine. These products are regulated, albeit indirectly, through Maine's "abandoned property" statutes, 33 MRSA sec. 1951 *et seq.* The general rules on such so-called "gift obligations" are as follows:

- 1) Such cards cannot have an expiration date;
- 2) No "dormancy charges" or other fees can be assessed against the cards, unless those fees are clearly disclosed, both on the cards themselves and in the purchase contract; and
- 3) Such charges cannot be "unconscionable" in amount.

Maine's unclaimed property laws further discourage dormancy fees by requiring that 100% of the original face value of any gift card that charges such fees to be turned over to the State Treasurer after 3 years. A merchant that does not assess dormancy fees is permitted to turn over only 60% of the card's original face value.

These rules apply to cards issued by a merchant that are redeemable at the merchant's place of business. They are distinguishable from "stored value cards" that are issued by a third party and can be redeemed at many different locations. Such stored value cards are a method of transmitting money from one location to another, and are therefore subject to Maine's money transmitter statutes, 32 MRSA § 6101 *et seq.*

As a final note on gift cards: Because reductions in a card's value are recorded on a card's magnetic stripe or computer chip, the remaining balance is not "visible" to a consumer. That lack of visibility nearly cost Falmouth-area consumers about \$1,000 last month. According to the *Forecaster* newspaper, an employee of the Falmouth, Maine Wal-Mart was issued a summons on December 29, 2004 on a charge of theft by deception. The employee allegedly had been swapping customers' gift cards with blank gift cards at the cash register, then using the stolen cards. Wal-Mart reported that over a three-week period the employee stole 10 cards valued at about \$925.

## Notice of Agency Rulemaking Proposals

The Office of Consumer Credit Regulation and the Bureau of Financial Institutions recently announced proposals to repeal or amend several jointly-administered regulations. Specific proposals include:

### RULE

- Rule 180, "Definition of Official Fees"
- Rule 200, "Rule on Refinancing Multiple Transactions"
- Rule 220, "Change in Dollar Amount"
- Rule 230, "Regulation Z-1, Truth-in-Lending"
- Rule 120 (Bureau of Financial Institutions Chapter 143), "Multiple of Federal Minimum Wage"

### PROPOSED CHANGE

- Repeal, because underlying law changed
- Repeal, because underlying law changed
- Repeal, because underlying law changed
- Repeal, because superseded by Rule 240 (Bureau of Financial Institutions Chapter 138) of same title
- Amended to clarify example used in rule

Detailed summaries of these proposed changes can be found on our agency's website, [www.MaineCreditReg.org](http://www.MaineCreditReg.org), by clicking on the "Laws, Rules, Advisory Rulings" link, and then on the "Proposed Rules/Changes" link. Comments or requests for hearings may be submitted to the agency electronically ([Linda.J.Cunningham@Maine.gov](mailto:Linda.J.Cunningham@Maine.gov)), or by mail, until March 10, 2005.

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## Examination Summary Jan. 1, 2004 through Dec. 30, 2004

by Del Pelton, Principal Examiner

Total Exams (including 287 in-house exams): ..... 435

*By Business Type:*

Supervised Lenders .....	158
Auto Dealers .....	72
Debt Collectors .....	71
Mortgage Brokers .....	55
Leasing Companies .....	35
Pawn Brokers .....	15
Sales Finance Companies .....	13
Credit Reporting Agency .....	12
Loan Servicer .....	1
Money Transmitters .....	1
Payday Lenders .....	1
Time Share .....	1

Total Restitution resulting from exams: ..... \$4,135.05

*Most common violations:*

Mortgage Brokers: Incomplete or no contract provided ...	346
Supervised Lenders: No attorney notice provided .....	120
Auto Dealers: Incomplete and/or incorrect disclosures ...	117
Supervised Lenders: Incomplete or no broker contract provided .....	107
Supervised Lenders: Incorrect and/or incomplete truth-in-lending disclosures .....	44
Auto Dealers: No disclosure provided .....	43
Auto Dealers: No privacy notice provided .....	40
Debt Collectors: Incomplete collection letters .....	38
Credit Reporting Agencies: Accessing incorrect fee .....	31
Pawn Brokers: No privacy notice provided .....	25

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## Payday Lending Growing in Maine, but Slowly

Maine now has 6 payday lending offices, up from only one as recently as 2001.

Payday lenders offer short term (one- or two-week) loans, secured either by a post-dated check or by an ACH authorization permitting the lender to debit funds from the consumer's checking account.

Supporters of such loans say that payday loans are a valuable option for consumers who need quick cash. Opponents cite the high cost of such loans, and say that it's easy to get into a "treadmill" of interest-only repayments.

Payday lenders are common in other states. However, Maine's relatively strict interest rate cap has discouraged explosive growth in this state.

In Maine, a lender is permitted to charge \$15 for a one-week loan of \$100. However, that same \$15 limit applies to loans as large as \$250. Payday lenders in most states are permitted to charge an average of \$15 per hundred dollars, so that a \$200 loan can result in a \$30 finance charge.

Payday lenders in Maine are currently licensed as "supervised lenders," and are subject to the provisions of the state's Consumer Credit Code. The Code permits the Office of Consumer Credit Regulation to conduct on-site compliance examinations and resolve any consumer complaints. Additional restrictions also apply, such as a prohibition on collection costs or attorney's fees if the consumer defaults on the loan.

A roster of currently-licensed payday lenders is found below:

NAME/LOCATION	FIRST LICENSED
ACE America's Cash Express/St. John St., Portland	1997
ACE America's Cash Express/Pleasant St., Brunswick	2004
Cash X-Press/Harlow St., Bangor	2004
Redi-Cash, Inc./Main St., Biddeford	2004
Republicash, LLC/Brighton Ave., Portland	2002
Republicash, LLC/Lisbon St., Lewiston	2003

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